

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: CISCO SYSTEMS, INC.
SECURITIES LITIGATION

CIVIL ACTION NO. 05-10261-RWZ

ORDER

August 1, 2005

Pursuant to a subpoena, the Pension Fund plaintiffs sought production of documents by a third party not otherwise involved in the litigation, Massachusetts Financial Services Investment Management (“MFSIM”). They moved to compel such production when these parties could not resolve their differences as to the documents. The court allowed the motion without opposition and MFSIM now moves for reconsideration on the ground of excusable mistake.

The motion for reconsideration is allowed.

With respect to the underlying motion, MFSIM points to the language of Rule 45(c)(3)(B)(ii) which protects from disclosure “an unretained expert’s opinion or information not describing specific events or occurrences in dispute . . .” It argues that the documents in issue are internal reports about Cisco securities prepared by its research analysts for its employees who make investment decisions. They therefore fall within the protective language of the Rule. MFSIM further points out that it has already produced more than 1200 pages of documents that reflect communications between the analyst and Cisco that are properly subject to discovery. Plaintiffs complain about stonewalling.

The Court has, of course, not reviewed the disputed documents and cannot, therefore, decide whether each and every one is protected as expert work product or whether it must be produced. If the parties are intent on pursuing this matter, MFSIM shall file a privilege log, and plaintiffs may file a further motion to test MFSIM's assertions of expert work product.

DATE

/s/ Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE